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No. 90-1185

In The

Supreme Court Of The United States

OCTOBER TERM, 1990

STATE OF CONNECTICUT,
Petitioner

v.

SUSAN NELSON,
Respondent

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF CONNECTICUT

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Question Presented

Whether the Connecticut Appellate Court erred in holding that due process of law was violated when the State of Connecticut prosecuted the respondent for manslaughter, after the State, in bargaining for the respondent's guilty plea to assault based on the same incident, had induced in her the reasonable belief that her plea and punishment for assault ended her criminal liability.

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Opinions Below

The opinion of the Connecticut Appellate Court is reported at 23 Conn. App. 215, 579 A.2d 1104 (1990), and is reprinted in the appendix attached to the State Of Connecticut's Petition for Certiorari at A1 to A8. The order of the Connecticut Supreme Court denying the State's Petition for Certification to appeal from the Appellate Court is reported at 216 Conn. 826, 582 A.2d 205 (1990), and is

reprinted in the petitioner's Appendix at A9.

Jurisdiction

This Court has jurisdiction to review the decision of the Connecticut Appellate Court pursuant to 28 U.S.C. § 1257. The Appellate Court's decision was issued on September 11, 1990, and was made final at the state level on October 23, 1990, when the Connecticut Supreme Court denied the State's Petition for Certification to appeal.

Constitutional and Statutory Provisions Involved

The Constitutional, Statutory and Practice Book Provisions relied upon herein are attached hereto as Appendix I. References to the Appendix attached to the State of Connecticut's Petition for Writ of Certiorari are cited herein as "Petition at A1 [through A9]."

Statement Of The Case

On February 20, 1988 the respondent's vehicle struck and seriously injured 13-year-old Eric Zimmerman in Milford, Connecticut. On that date the respondent was arrested and charged with, inter alia, assault in the second degree with a motor vehicle while intoxicated, in violation of Conn. Gen. Stat. § 53a-60d.

On April 26, 1988 a plea negotiation conference was held in the chambers of the Honorable Charles Gill, who presided in the Superior Court at Derby, Connecticut. Present along with Judge Gill were the prosecutor, Paul Gaetano, defense counsel, Norman Chase, and Attorney Bernard F. Joy, who represented the victim and his family.[1] At that conference, in response to an inquiry by Judge Gill about the victim's condition, Attorney Joy stated that the victim was still hospitalized, in grave condition, and that he might not live.[2] At the conclusion of the conference,

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[1] The petitioner, in its Statement of the Case, fails to make any mention of the fact that plea negotiations in Judge Gill's chambers took place on April 26, 1988. Further, the petitioner ignores the Connecticut Appellate Court's findings concerning the substance of those negotiations. State v. Nelson, 23 Conn. App. at 216 [Petition at A2]. Especially telling is the petitioner's unwillingness to acknowledge that the victim was represented by counsel during those plea negotiations.

[2] Attorney Joy described the plea conference in a sworn affidavit that is part of the trial court record reviewed by the Connecticut Appellate Court. Nelson, 23 Conn. App. at 216 [Petition at A2]. That affidavit provided in pertinent part:

> 3. At that time, a conference was held in the chambers of the presiding Judge for this case, the Honorable Charles Gill. Also present, were Deputy Assistant State's Attorney, Paul Gaetano, and Attorney Norman K. Chase, representing the defendant, Susan Nelson.

(continued...)

the trial judge indicated that he would accept the plea agreement reached by the parties.[3]

Following the in-chambers negotiations, the respondent pleaded guilty to the assault charge pursuant to the agreement, averring that she did so knowingly, intelligently and voluntarily, in exchange for the agreed-upon disposition reached by all parties to the plea negotiations.[4] Prosecutor Gaetano stated on

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[2](...continued)

4. At that time, inquiry was made as to an agreed recommendation for disposition of the case, which was discussed at great length.

5. During this discussion, Judge Gill inquired of me as to the condition of the victim at that time. I informed Judge Gill that Eric Zimmerman was not doing well, and may not make it.

6. Judge Gill then indicated his concurrence of the plea negotiation.

[3] Under the Connecticut Rules of Court parties to a proposed plea agreement may advise the trial court judge in open court or chambers regarding the agreement and the judge "may indicate whether he will concur in or reject the proposed disposition." Practice Book § 706.

[4] The petitioner makes much of the fact that during the canvass, the respondent stated that, apart from the recommended sentence, no other promises were made to induce her guilty plea. As the respondent maintained in the Connecticut Appellate Court, the respondent's

(continued...)

the record just before entry of respondent's plea that "[t]he state ... is going to recommend for Your Honor's consideration, after discussing the matter with counsel for Eric Zimmerman's family, the counsel being Judge Joy,[5] sentence of five years, execution suspended as Your Honor deems appropriate, and with whatever conditions of probation as Your Honor deems appropriate."

At the respondent's sentencing hearing on June 10, 1988, the victim's mother told the court that her son had undergone a second life-saving operation just ten days after the April 26, 1988 court date at which the respondent had entered her plea under the plea agreement. The victim's mother stated that her son's condition was still extremely serious, and that he faced a long and difficult

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[4](...continued)
statement was a fiction common in Connecticut practice and one in which the trial prosecutor himself indulged. For example, as part of the assault plea agreement, the trial prosecutor promised, but did not state on the record, that the state would enter a nolle prosequi on each of the other charges pending against the respondent. Nelson, 23 Conn. App. at 219-20 [Petition at A3, A6]. Indeed, after sentencing, the prosecutor honored that promise, entered the nolles, and, consistent with an intention not to prosecute further, the prosecutor asked that evidence seized in the case be ordered destroyed. Id., 219-20. See Conn. Gen. Stat. § 54-36g(b).

[5] Attorney Joy, also a probate judge in Milford, Connecticut, is sometimes called Judge Joy.

recovery period.[6]

In his brief sentencing remarks, defense counsel told Judge Gill:

> The entire situation is a tragic situation. We have mothers on both sides. My client is the mother of three children. Eric Zimmerman's family obviously has great concern over what goes on here today as demonstrated by their presence here.
>
> Any incarceration granted today or imposed today will only be part of the ordeal that my client will have to go through along with probation. She will never be free of this tragedy. She has three children who are going to suffer in the meantime. She understands as a mother what has taken place here and what has taken place as a result of her actions. She certainly regrets and has tremendous remorse for all this. With all that in mind, we would ask that your Honor accept the agreed recommendation and the probation as outlined.

Prior to imposing sentence, Judge Gill observed:

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[6] The victim's mother also spoke of the victim's potential recovery, though the Connecticut Appellate Court found that "the state and the defendant had to be aware that this [recovery] was by no means a certainty." Nelson, 23 Conn. App. at 219 [Petition at A6].

> These are one of those awful days for everybody in the Court system and outside the Court system. From where I sit, I look down at two sides of the aisles where people are emotionally distraught over an unnecessary event that has life-long ramifications for so many people.... I suppose that the sentence that has been agreed upon is one that saves many people further heartache because of [if] the sentence was not agreed upon, then we go to other machination, that probably in the long run makes things worse for everybody.

Honoring the plea agreement, Judge Gill then sentenced the respondent to a term of five years incarceration, execution suspended after three years, with five years probation, with three special conditions: (1) in-patient or outpatient alcohol treatment if deemed appropriate by her probation officer; (2) no use of alcohol during the five year probation; and (3) one thousand (1,000) hours of community service in either a hospital setting or an alcohol education program. See, Nelson, 23 Conn. App. at 217 [Petition at A3].

Addressing the respondent, the victim's relatives, and the attorneys for the defendant, the State and the victim, Judge Gill's concluding words were: "There is no magic wands the Courts have to make everything right. We cannot reverse history. We can only look forward. And I urge both sides to look forward here as best you can.... My sympathy to all. My best wishes to all." The prosecutor then requested that contraband seized from the respondent at the scene of the crime be destroyed. The trial court granted the request, and ordered the evidence

destroyed. The respondent immediately began serving her sentence at the Connecticut Correctional Institute at Niantic, Connecticut.

Some four and a half months after the defendant's sentencing, on October 26, 1988, the victim died from his injuries, never having left the hospital. Nelson, 23 Conn. App. at 217 [Petition at A3]. On February 21, 1989 the State of Connecticut initiated a new prosecution of the respondent, charging her with manslaughter in the second degree with a motor vehicle while intoxicated. Conn. Gen. Stat. § 53a-56b (Rev. to 1985). This charge relied on the same incident and the same conduct as respondent's earlier prosecution and conviction for assault in the second degree with a motor vehicle while intoxicated.

The respondent moved to dismiss the manslaughter prosecution (hereafter "Nelson II") on two separate and distinct grounds.[7] First, she claimed double jeopardy. Second, she claimed that her plea agreement with the state barred the new homicide prosecution, because she reasonably understood the terms of the agreement to be that she would face no further criminal liability in exchange for that plea. In support of the latter argument, the respondent relied upon, inter alia, Attorney Joy's representation made during the plea negotiation conference that the victim "may not make it" and on the State's conduct, in the face of the victim's precarious condition, throughout plea negotiations.

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[7] Respondent was found indigent in Nelson II. Thus, Attorney Chase represented her as a Special Public Defender in the trial court and the University of Connecticut Legal Clinic has represented her on appeal.

The Honorable Robert E. Reilly, Judge, held a hearing on the respondent's motion to dismiss. At the hearing the respondent's attorney, Norman Chase, who had negotiated the earlier assault plea agreement, declared:

> Our concern is that we are being charged with a subsequent offense for something that we had a reasonable belief and understanding that -- it was in contemplation at the time we entered our previous plea .... For all intents and purposes, it was our reasonable belief that that plea was a -- represented a final resolution of the matter; and a new prosecution would violate that plea agreement.

At the hearing, Judge Reilly found, inter alia, that Attorney Joy during the assault plea negotiation session "had informed all concerned of the victim's precarious condition." Nelson, 23 Conn. App. at 217 [Petition at A3]. However, Judge Reilly denied the respondent's motion to dismiss, concluding that the law "would not hold the state to predicting the victim's death[.]" Id.[8] The respondent thereupon appealed to the Connecticut Appellate Court.[9]

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[8] The trial court also rejected the respondent's claim that double jeopardy barred her prosecution for manslaughter.

[9] By agreement, the trial court allowed the respondent to withdraw her assault guilty plea, and the respondent thereupon pleaded nolo contendere to manslaughter in the second degree, conditional on her right to appeal from the denial of her motion to dismiss.

(continued...)

In the Connecticut Appellate Court, the respondent pressed her claim that the manslaughter prosecution in Nelson II violated due process of law because, in bargaining for her plea to assault, the State induced in her a reasonable belief that she faced no further criminal liability in the matter [Petition at A4]. The respondent argued that the benefits exchanged between the government and a criminal defendant in a plea bargain have value to each only if the plea agreement is final and enforceable for the government and the defendant alike. The respondent relied on Connecticut and federal decisional law and, in particular, on the New Jersey Supreme Court's decision in a nearly identical case, State v. Thomas,[10] 294 A.2d 57 (N.J. 1972).

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[9](...continued)
Nelson, 23 Conn.App. at 217. Conn. Gen. Stat. § 54-94a. The court then sentenced the respondent to ten years imprisonment, execution suspended after four years, with five years probation, with credit for time served on the earlier conviction.

[10] In Thomas, the defendant was charged with assault. During the course of plea negotiations, his counsel became aware that the victim might die from injuries sustained in the assault. The defendant pled guilty to assault, in exchange for the state's promise to dismiss all other pending charges. Subsequently, the victim died as a result of injuries sustained in the assault, and the state attempted to bring a murder indictment. The New Jersey Supreme Court held that, because the defendant reasonably understood his plea of guilty to assault as a final adjudication of all criminal liability flowing from the
(continued...)

The Connecticut Appellate Court reviewed the record and resolved the dispute over the terms of the original plea agreement in favor of the respondent's understanding of its finality. Nelson, 23 Conn. App. at 219-21 [Petition at A4-A7]. The Court's analysis focused upon "the real intent on the parties, and most significantly, of [the defendant] ...." Nelson, 23 Conn. App. at 219, quoting Paradiso v. United States, 689 F.2d 28, 31 (2d Cir. 1982), cert. denied, 459 U.S. 1116 (1983). Relying upon this Court's decision in Santobello v. New York, 404 U.S. 257 (1971), the Appellate Court concluded that the respondent reasonably believed that the assault plea agreement terminated all her criminal liability flowing from the accident. Nelson, 23 Conn. App. at 219 [Petition at A5-A6].

The Appellate Court deemed specific performance of the assault plea agreement the "only appropriate remedy because it is the only way that the status quo can be restored." Nelson, 23 Conn. App. at 220-21 [Petition at A7]. The Appellate Court reversed the manslaughter conviction, and remanded the case with instructions that the respondent's assault conviction be reinstated.[11]

The State of Connecticut sought review of the Appellate Court's decision in the Connecticut Supreme Court. The gravamen of the

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[10](...continued)
original incident, the murder indictment violated the terms of the plea bargain. Id., 61-62.

[11] The Connecticut Appellate Court did not reach the respondent's double jeopardy claim.

State's Petition For Certification was that the Connecticut Appellate Court had engaged in "appellate factfinding to contradict the findings of the trial court."[12] In cursory fashion the State also challenged the Appellate Court's legal determination that due process of law requires enforcement of a defendant's reasonable understanding of a plea agreement's terms.

On October 23, 1990 the Connecticut Supreme Court denied the State of Connecticut's petition for certification to appeal the decision of the Appellate Court. State v. Nelson, 216 Conn. 826, 582 A.2d 205 (1990).

Reasons For Denying
The Petition For Certiorari

The State of Connecticut does not seriously dispute the correctness of the Connecticut Appellate Court's conclusions based on the "specific facts of this case." Petition at 8. Instead, the State fears that an important "question of law and policy" is posed by this case even though the Court's analysis of the ambit of the plea agreement is fair and accurate on this record. The respondent submits that due process analysis is necessarily fact-based and case-specific. Thus this case does not, sub rosa, pour the due process guarantee into a stiff cast. The outcome in this case, simply, is fair.

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[12] The State devoted eight of the petition's ten pages to the claim that the Connecticut Appellate Court impermissibly engaged in factfinding.

The State seeks review of the Connecticut Appellate Court decision ordering the specific enforcement of a bargained for term of a plea agreement, i.e., finality of criminal liability for an incident. The State challenges the Connecticut Appellate Court's conclusion that due process of law requires enforcement of the plea agreement in Nelson I, thereby barring the renewal of criminal liability for the same event. The State predicts that if this Court leaves undisturbed the decision in Ms. Nelson's case, "an inescapable diminution in the solemnity of guilty pleas in American courts" will follow. Petition at 7. The respondent disagrees. The vitality of plea bargaining in American Criminal Justice is not at stake in this case. There is nothing novel about the application of contract principles to determine the content of a given plea agreement. See, e.g., Commonwealth v. Smith, 427 N.E.2d 739 (Mass. 1981); Sanford v. Phoenix Municipal Court, 717 P.2d 900 (Ariz. 1986); Ricketts v. Adamson, 483 U.S. 1 (1987); State v. Thomas, 294 A.2d 57 (N.J. 1972).

The State characterizes the ruling below as conflicting with this Court's decisions in United States v. Benchimol, 471 U.S. 453 (1986), and Blackledge v. Allison, 431 U.S. 63 (1977). The respondent disagrees. The ruling below does not conflict with this Court's decisions emphasizing the essential need for fairness and finality in the plea bargaining process. The petitioner's claim that the Connecticut Appellate Court decision "disrupts the delicate balance between a defendant's rights and a state's interests in plea bargaining" is incorrect: the decision below maintains that balance because it "presuppose[s] fairness" in the plea bargaining process. Santobello, 404 U.S. at 261.

Argument

In Santobello v. New York, 404 U.S. 257 (1971), this Court declared that principles of fairness embodied in the Due Process Clause of the Fourteenth Amendment govern the practice of plea bargaining. Because a criminal defendant waives an array of constitutional rights in entering a voluntary guilty plea, due process of law mandates "fairness in securing agreements between an accused and a prosecutor." Santobello, supra, 257. The plea bargaining process "must be attended by safeguards to insure the defendant what is reasonably due in the circumstances." Santobello,[13] supra, 262. This Court declared:

> [W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.

Santobello, supra, 262.

The decision of the Connecticut Appellate Court is consistent with Santobello. In both cases, the government persuaded a defendant to

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[13] In Santobello, the defendant pleaded guilty to an offense in exchange for the prosecutor's promise to make no sentencing recommendation. Santobello, supra, 258. At sentencing a new prosecutor made a sentencing recommendation, in violation of the earlier plea agreement. Id., 259. This Court held the prosecutor's breach of the plea agreement violated due process of law, and remanded to state court for determination of the proper remedy, i.e., specific performance or vacation of the plea.

enter a plea of guilty in exchange for an inducement, and later attempted to dishonor that inducement. In each, the government's breach of promise denied the defendant due process of law. Accord, State v. Thomas, 294 A.2d 57 (N.J. 1972); Commonwealth v. Alvarado, 276 A.2d 526, 529 (Pa. 1971); Commonwealth v. Smith, 427 N.E.2d 739, 742 (Mass. 1981); Sanford v. Phoenix Municipal Court, 717 P.2d 900, 901 (Ariz. 1986).

This Court has "necessarily adopted as constitutionally legitimate the simple reality that the prosecutor's interest at the bargaining table is to persuade the defendant to forgo his right to plead not guilty." Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978). The State of Connecticut succeeded in persuading the respondent to plead guilty to a felony and, voluntarily, to go to jail in exchange for the benefit of knowing that the criminal justice part of a tragic car accident was at an end. Fundamental fairness requires that the State honor the finality of the plea bargain and the respondent's reasonable expectation that the State's interest in prosecuting her was exhausted by her plea and resulting incarceration. The record shows that the State's conduct through the plea bargaining process on April 26, 1988 "strongly suggests that it shared the defendant's interpretation of the plea agreement." Nelson, 23 Conn. App. at 219 [Petition at A6].

The petitioner asserts that the decision below conflicts with this Court's decision in United States v. Benchimol, 471 U.S. 453 (1985). Petition at 10-11. The petitioner reads much into Benchimol, a per curiam decision involving a collateral attack on a five year old guilty plea. The plea in Benchimol, unlike the instant case, was governed by Federal Rule of Criminal Procedure 11(e),

which "provides an elaborate formula for the negotiation of plea bargains" in federal cases. Id., 455. Benchimol's complaint was that a United State's Attorney, upon making a sentence recommendation pursuant to a plea agreement, failed to make the recommendation "enthusiastically". Id., 455.

This Court declared in Benchimol that "it was error for the Court of Appeals to imply as a matter of law a term which the parties themselves did not agree upon." Benchimol, 471 U.S. at 456 (emphasis added). In contrast, the court in Nelson found an actual agreement between the prosecutor and the respondent that no further prosecution would follow the assault guilty plea. Where the Benchimol Court projected a term into an agreement as a matter of law, it is clear that the Nelson Court did no such thing. Indeed, the gravamen of the State's complaint in the Connecticut Supreme Court was that, as a matter of fact, the Appellate Court was in error in concluding that the trial prosecutor by his words and actions showed the State "shared the defendant's interpretation of the plea agreement." Nelson, supra, 219 [Petition at A5, A6].

The petitioner's reliance upon Blackledge v. Allison, 431 U.S. 63 (1977), is also misplaced. In Blackledge, respondent Allison pleaded guilty in a North Carolina court to attempted safe robbery. At the entry of plea, the trial judge asked Allison: "Has the Solicitor, or your lawyer, or any policeman, law officer or anyone else made any promises or threat to you to influence you to plead guilty in this case?" Id., 66. Allison responded: "No." Id. The trial judge then sentenced Allison to seventeen to twenty-one years in prison. Id., 63.

Allison later filed a federal habeas corpus

petition, claiming that his guilty plea had to be set aside because his plea was the product of an unkept agreement that his sentence not exceed ten years. The federal district court dismissed the petition, deeming Allison's statement at the entry of plea that no promises induced his plea as conclusive evidence that no due process violation occurred. Id., 70.

This Court concluded that the lower court should not have summarily dismissed the petition because Allison's statement when canvassed that no promises had induced his guilty plea was not altogether conclusive, of his claim: "[T]he barrier of the plea or sentencing proceeding record, although imposing, is not invariably insurmountable." Id., 74.

To the degree it is material here at all, Blackledge supports the decision reached in Nelson. This Court recognizes the need under certain circumstances to look behind the in-court statements of a defendant to ascertain the constitutional validity of his or her guilty plea.[14] The Connecticut Appellate Court did no more than this in concluding that, notwithstanding the respondent's statement at the time of plea, the State's prosecution of her for manslaughter violated an agreed upon term of that plea agreement.

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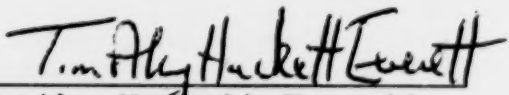
[14] Accord, Quintana v. Robinson, 31 Conn. Supp. 22, 26, 319 A.2d 515 (1973) ("Santobello teaches us that a defendant's 'no promises' declaration when he pleads guilty pursuant to 'plea bargaining' is not inviolable"); State v. Torres, 182 Conn. 176 (1980) ("'answers elicited from the defendant in open court should be something more than a mouthing of platitudes'", id., 180; plea canvas does not always circumscribe record, id., 191.)

Conclusion

For all the foregoing reasons, the respondent respectfully asks this Court to deny the State of Connecticut's Petition For A Writ Of Certiorari.

Respectfully submitted,

SUSAN NELSON, THE RESPONDENT

BY: 

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APPENDIX TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF CONNECTICUT

Constitution of the United States,

Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the

United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the State of Connecticut, Article First:

Sec. 8. In all criminal prosecutions, the accused shall have a right to be heard by himself and by counsel; to be informed of the nature and cause of the accusation; to be confronted by the witnesses against him; to have compulsory process to obtain witnesses in his behalf; to be released on bail upon sufficient security, except in capital offenses, where the proof is evident or the presumption great; and in all prosecutions by indictment or information, to a speedy, public trial by an impartial jury. No person shall be compelled to give evidence against himself, nor be deprived of life, liberty or property without due process of law, nor shall excessive bail be required nor excessive fines imposed. No person shall be held to answer for any crime, punishable by death or life imprisonment, unless upon probable cause shown at a hearing in accordance with procedures prescribed by law, except in the armed forces, or in the militia when in actual service in time of war or public danger.

Sec. 9. No person shall be arrested, detained or punished, except in cases clearly warranted by law.

Connecticut General Statutes, § 53a-56b defines Manslaughter in the second degree with a motor vehicle:

(a) A person is guilty of manslaughter in the second degree with a motor vehicle when, while operating a motor vehicle under the influence of intoxicating liquor or any drug or both, he causes the death of another person as a consequence of the effect of such liquor or drug.

(b) Manslaughter in the second degree with a motor vehicle is a class C felony and the court shall suspend the motor vehicle operator's license or nonresident operating privilege of any person found guilty under this section for one year.

Connecticut General Statutes, § 53a-60d defines Assault in the second degree with a motor vehicle:

(a) A person is guilty of assault in the second degree with a motor vehicle when, while operating a motor vehicle under the influence of intoxicating liquor or any drug or both, he causes serious physical injury to another person as a consequence of the effect of such liquor or drug.

(b) Assault in the second degree with a motor vehicle is a class D felony and the court shall suspend the motor vehicle operator's license or nonresident

operating privilege of any person found guilty under this section for one year.

Connecticut General Statutes, § 54-36g concerning destruction of evidence upon final disposition of a criminal action provides in part:

* * * *

(b) Upon final disposition of the criminal action or, if there is no criminal action, at any time upon motion of the prosecuting official, the court shall order the destruction of any controlled drug, controlled substance or drug paraphernalia not previously destroyed pursuant to an order under subsection (a) of this section, or order it delivered to the commissioner of consumer protection as soon as possible.

Connecticut Rules of Court

Practice Book, § 687:

Procedure for Plea Discussions -- In General: The prosecuting authority and counsel for the defendant, or the defendant when he is not represented by counsel, may engage in discussions at any time with a view towards disposition. Negotiations may occur either prior to or after the arraignment. The prosecuting authority shall be in his office at reasonable times for the purpose of giving to counsel for the defendant, and to all others in interest, a reasonable opportunity for consultation with him.

Practice Book, § 690:

> **Procedure for Plea Discussions -- Subject Matter:** Discussion need not be limited to the entry of a plea of guilty or nolo contendere, and may include any disposition without trial permitted under these rules or the General Statutes. The parties may also discuss pretrial motions filed or yet to be filed which would lead to a disposition of the case without trial.

Practice Book, § 694:

> **Procedure for Plea Discussions -- Notice of Plea Agreement:** If a plea agreement has been reached by the parties, which contemplates the entry of a plea of guilty or nolo contendere, the judicial authority shall require the disclosure of the agreement in open court or, on a showing of good cause, in camera at the time the plea is offered. Thereupon the judicial authority may accept or reject the agreement, or he may defer his decision on acceptance or rejection until there has been an opportunity to consider the presentence report, or he may defer it for other reasons.

Practice Book, § 706:

> **Disposition Conference -- Nature of Conference -- Notice of Agreement:** If the parties reach an agreement which contemplates the entry of a plea of guilty or nolo contendere, they may advise the judicial authority in advance of the plea. The judicial authority may indicate whether he will concur in or reject the proposed disposition.